

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Business Savings Plan	)	IC Nos. 01-S65290
	)	02-S67797
Complaints Regarding	)	02-S67922
Unauthorized Change of	)	02-S69325
Subscriber's Telecommunications Carrier	)	02-S71426
	)	02-S71427
	)	02-S71568
	)	02-S71575
		02-S71638
		02-S72453
		02-S74480
		02-S76291

**ORDER**

**Adopted: April 25, 2003**

**Released: April 30, 2003**

By the Acting Deputy Chief, Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaints<sup>1</sup> alleging that Business Savings Plan (BSP) changed Complainants' telecommunications service providers without obtaining authorization and verification from Complainants in violation of the Commission's rules.<sup>2</sup> We conclude that BSP's actions did result in an unauthorized change in Complainants' telecommunications service providers and we grant Complainants' complaints.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).<sup>3</sup> Section 258 prohibits the practice of

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<sup>1</sup> See Appendix A.

<sup>2</sup> See 47 C.F.R. §§ 64.1100 – 64.1190.

<sup>3</sup> 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), *stayed in part*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June (continued....))

“slamming,” the submission or execution of an unauthorized change in a subscriber’s selection of a provider of telephone exchange service or telephone toll service.<sup>4</sup> In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.<sup>5</sup> Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.<sup>6</sup> Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130 authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.<sup>7</sup>

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.<sup>8</sup> Where the subscriber has paid charges to the unauthorized carrier, the Commission’s rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.<sup>9</sup> Carriers should note that our actions in this Order do not preclude the Commission from taking action, if warranted, pursuant to section 503 of the Act.<sup>10</sup>

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27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); *reconsideration pending*. Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. *See, e.g., Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), *stayed in part*, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, *reconsideration denied*, 102 F.C.C.2d 503 (1985).

<sup>4</sup> 47 U.S.C. § 258(a).

<sup>5</sup> *See* 47 C.F.R. § 64.1120(b).

<sup>6</sup> 47 U.S.C. § 258(a).

<sup>7</sup> *See* 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

<sup>8</sup> *See* 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

<sup>9</sup> *See* 47 C.F.R. §§ 64.1140, 64.1170.

<sup>10</sup> *See* 47 U.S.C § 503.

4. We received Complainants' complaints alleging that Complainant's telecommunications services providers had been changed from their authorized carriers to BSP without Complainants' authorization.<sup>11</sup> Pursuant to Sections 1.719 and 64.1150 of our rules,<sup>12</sup> we notified BSP of the complaints and BSP responded. BSP states that it does not have a letter of agency (LOA) or third party verification recording (TPV) because each customer's account was acquired during a bulk transfer. Our rules allow carriers to transfer customers in bulk provided that the acquiring carrier sends notice of the switch to the consumer and file that notice with the Commission at least thirty days before the switch.<sup>13</sup> BSP has failed to comply with the filing requirements. BSP has failed to produce clear and convincing evidence that Complainant authorized a carrier change.<sup>14</sup> Therefore, we find that BSP's actions resulted in an unauthorized change in Complainants' telecommunications service providers and we discuss BSP's liability below.<sup>15</sup>

5. BSP must remove all charges incurred for service provided to Complainants for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.<sup>16</sup> We have determined that Complainants are entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that neither the authorized carriers nor BSP may pursue any collection against Complainants for those charges.<sup>17</sup> Any charges imposed by BSP on each subscriber for service provided after this 30-day period shall be paid by each subscriber to their authorized carrier at the rates each subscriber was paying to its authorized carrier at the time of the unauthorized changes.<sup>18</sup>

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaints filed against BSP ARE GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainants are entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred to the

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<sup>11</sup> See Appendix A.

<sup>12</sup> 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

<sup>13</sup> See 47 C.F.R. § 64.1120(e)(1),(3).

<sup>14</sup> See 47 C.F.R. § 64.1150(d).

<sup>15</sup> If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

<sup>16</sup> See 47 C.F.R. § 64.1160(b).

<sup>17</sup> See 47 C.F.R. § 64.1160(d).

<sup>18</sup> See 47 C.F.R. §§ 64.114, 64.1160.

relevant Complainant and neither the authorized carrier nor BSP may pursue any collection against Complainants for those charges.

8. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Acting Deputy Chief  
Policy Division  
Consumer & Governmental Affairs Bureau

## APPENDIX A

<u>INFORMAL COMPLAINT NUMBER</u>	<u>DATE OF COMPLAINT</u>	<u>DATE OF CARRIER RESPONSE</u>	<u>NAME OF AUTHORIZED CARRIER</u>
01-S65290	October 1, 2001	April 11, 2002	Qwest Communications
02-S67797	December 31, 2001	April 18, 2002	AT&T Corp.
02-S67922	February 19, 2002	April 18, 2002	None
02-S69325	March 8, 2002	May 10, 2002	None
02-S71426	February 25, 2002	June 11, 2002	AT&T Corp.
02-S71427	February 21, 2002	June 11, 2002	AT&T Corp.
02-S71568	April 8, 2002	July 17, 2002	None
02-S71575	March 22, 2002	June 11, 2002	Cable & Wireless
02-S71638	March 29, 2002	September 23, 2002	AT&T Corp.
02-S72453	April 18, 2002	June 11, 2002	AT&T Corp.
02-S74480	May 2, 2002	July 30, 2002	AT&T Corp.
02-S76291	March 15, 2002	July 30, 2002	AT&T Corp.